National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: April 18, 1994

TO: Elizabeth Kinney, Regional Director, Region 13

FROM: Robert E. Allen, Associate General Counsel, Division of Advice

SUBJECT: Chicago and Northeast Illinois District Council of Carpenters (Woodworkers Association of Chicago), Case 13-CB-14286

536-2581-3335, 536-5075-5075, 548-6030-6725-4200, 650-1100, 650-8811-3308, 712-5042-6783-7200

This case was submitted for advice as to whether (1) a joint apprenticeship program was an agent of the Union, and thereby violated Section 8(b)(1)(A) by expelling an apprentice for resigning from the union, and (2) whether the Union violates Section 8(b)(1)(A) by accepting Employer contributions to a joint apprenticeship program which conditions participation on full union membership.

FACTS

The Woodworkers Association of Chicago ("WAC"), a multi-employer association, was signatory to a collective-bargaining agreement with the Union which expired on May 31, 1993.[1] The parties were unable to reach a new agreement and, beginning on October 18, the Union selectively struck various WAC members. On October 20, the Union informed the employees of WAC member Highland Park Millwork ("Employer") that it was striking the facility and requested that they honor the picket line. Many of the employees opted to resign from the Union and filled out a resignation form provided by the Employer on that same date.[2]

Apprenticeship Program

The Chicago and Northeast Illinois District Council of Carpenters Apprentice and Trainee Program ("Program"), a joint apprenticeship and training program, was established pursuant to a series of collective-bargaining agreements between the Union and WAC and was developed in cooperation with the Department of Labor. The Program is designed to provide a ready supply of skilled cabinet makers for WAC members and is the only recognized training that qualifies an employee to be a journeyman cabinet maker. It is funded by Employer contributions to the Program Trust Fund as set forth in the collective-bargaining agreement.[3] A joint apprenticeship committee ("Trustees") consisting of an equal number of Employer and Union representatives, governs the Program and has promulgated its Standards. Under those Standards, the Trustees have designated the Apprenticeship Coordinator to be responsible for the operation of the Program.

The collective-bargaining agreement provides that there will be no discrimination in the employment of apprentices based on sex, age, color, creed or national origin. Further, the Standards of Apprenticeship require only that each applicant for apprenticeship be 17 years old, reside in a specified county, have completed two years of high school, have a social security number, and be able to pass a physical examination. Upon successful completion of pre-apprentice training, the applicant signs an apprenticeship agreement in which he/she promises, inter alia: "Simultaneously with the signing of this agreement to join [the local union], affiliated with [the Union]." Further, the agreement allows the Program Coordinator to impose reasonable penalties for the apprentice's failure to comply with all terms and conditions imposed by the collective-bargaining agreement. An individual may only become a journeyman cabinet maker, and receive journeyman's wages, upon successful completion of the Program and certification by the Program Coordinator. Moreover, only employees enrolled in the Program may work as apprentices for WAC employers.

As noted above, the parties' collective-bargaining agreement expired on May 31 and has not yet been renewed. The expired collective-bargaining agreement recognizes the Union as the sole and exclusive bargaining representative for all employees,

including apprentices, in the bargaining unit. Under the union security clause of that contract, all bargaining unit employees must become members of the Union within 30 days of employment and must "maintain their membership in the Union in good standing by remaining current in the payment of dues and assessments as a condition of continued employment."[4]

Termination of John Kopinski from the Program

John Kopinski is employed as an apprentice by the Employer and signed an apprenticeship agreement, as described above, on June 20, 1991. On October 21 and 22, he honored the picket line. The following week he attended apprenticeship classes at the apprenticeship training facility. On November 3, Kopinski completed a resignation form which the Employer delivered to the Union before he reported to work the next day. During the evening of November 3, Union Organizer Brown phoned Kopinski and asked him why he had resigned. When Kopinski did not respond, Brown told him he would be fined the maximum amount and dropped from the apprenticeship program. In a letter dated November 29 from the Program Coordinator, Kopinski was notified that he was dropped from the Program for failing to maintain his Union membership. The letter also informed Kopinski that the Local Union would be notified and would refuse to accept dues from Kopinski or issue him a quarterly working card.[5] Kopinski continues to work for the Employer.

ACTION

We conclude that a Section 8(b)(1)(A) complaint should issue, absent settlement, alleging that (1) the Program Coordinator, acting as an agent of the Union unlawfully expelled Kopinski from the Apprenticeship Program for failing to maintain his Union membership, and (2) the Union violated Section 8(b)(1)(A) by conditioning participation in the Program upon maintenance of full Union membership.

I. Agency

In Plumbers Local 375 (Richard Osborn)[6], the Board held that an apprenticeship program created by a collective-bargaining agreement may be considered an agent of the signatory union and signatory employer. In that case, the joint apprentice training committee (JATC) was found to be an agent of the union in circumstances where there was evidence that the JATC existed by virtue of the collective-bargaining contract between the union and the Association and operated pursuant to the terms of said contract. Also, the contract provided that the JATC was to operate its training program according to procedures set forth by the U.S. Department of Labor. The contract specifically incorporated the apprenticeship system under the direction of the JATC, including their rules, as part of the agreement. In addition, the contract indicated that apprentices were to be dispatched from an availability list maintained by the JATC and were to be employed only with the approval of the JATC. The contract also required that an apprentice complete a course of study proscribed by the JATC and provided that the JATC shall consist of an equal number of representatives of the Association and the union.

In the instant case, the Program is incorporated by the collective-bargaining agreement and operates in accordance with the Standards of Apprenticeship, developed in cooperation with the Department of Labor and established by the Trustees. The Trustees, an equal number of Union and WAC representatives, determine the number of starting apprentices each year and must approve any variations from the contractual limits on the number of apprentices any WAC employer may hire. Moreover, the Trustees, through the Program Coordinator ("Coordinator"), ensure that apprentices satisfactorily complete the Program's requirements of work experience and classroom instruction. The Trustees also designated the Coordinator to act in their behalf regarding discipline of apprentices for violations of the terms of the apprentice agreement. Thus, as in Plumbers Local 375, we conclude that the Program, through the Trustees and the Coordinator, is an agent of the Union.

The Supreme Court's decision in NLRB v. Amax Coal Co., 453 U.S. 322 (1981), does not lead to a different result. Under Amax Coal, trustees of jointly-administered pension funds are not presumed to be agents of the respective parties that appointed them. Those trustees jointly are fiduciaries, whose duties toward the trust beneficiaries should outweigh any loyalties to the parties that appointed them. In contrast, the Apprenticeship Program here primarily benefits the Union and the Employer by providing an adequate supply of trained employees. The Program's significant benefits to the apprentices are incidental to this purpose. Further, the Trustees who administer the Program owe no true fiduciary responsibility to the apprentices. For these reasons, Amax Coal does not affect our conclusion that the Program is an agent of the Union.

As noted above, the Program is the exclusive manner in which employees may work as apprentices and ultimately become journeymen cabinet makers for WAC employers. Accordingly, the Coordinator, an agent of the Union, violated Section 8(b)(1)(A) by ousting Kopinski from the Program because he did not maintain his full Union membership.[7]

II. Maintenance of Discriminatory Program Requirement

We further conclude that the maintenance of that aspect of the Program which requires apprentices to maintain full Union membership violates Section 8(b)(1)(A). We recognize that the language of the apprenticeship agreement which requires the apprentice to "join" the Union, without more, is subject to a lawful interpretation; the language virtually mirrors the language of Section 8(a)(3)[8] and, on its face, may require only that the apprentice become a financial core member to participate in the program.[9] Thus, it is unclear whether requiring an employee to "join" a union, without more, means that the employee must become a full member and incur such obligations as paying assessments, swearing an oath to the union, and signing a membership application, as opposed merely to paying periodic dues and fees.[10]

However, it is clear in the instant case that "join" means full Union membership. Although the apprentice agreement stated that apprentices would have to "join" the Union without specifying what that entails, Brown's November 3 threat and the Coordinator's November 27 letter make clear that Kopinski was expelled from the Program because he resigned from the Union. Thus, these action indicate that the clause in the apprenticeship agreement requires apprentices to maintain more than financial core membership. As further support for this conclusion, we note that the expired collective-bargaining agreement's union security clause required all unit members, including apprentices, to "maintain their membership in the Union in good standing by remaining current in the payment of dues and assessments as a condition of continued employment." (Emphasis supplied.)

It is well established that a union's exclusive hiring hall cannot condition employment referrals on full union membership.[11] Similarly, since the Program is the exclusive manner in which individuals may become apprentices and journeymen cabinet makers, the Union is unlawfully maintaining the requirement of full Union membership in the Program. To remedy this violation, the Region need only seek an order requiring the Union to cease and desist from requiring full Union membership for participation in the Program, expunge the unlawful language from the apprenticeship agreement, and reinstate Kopinski to the Program.[12] [FOIA Exemptions 2 & 5][13]

In sum, we conclude that the Region should issue complaint, absent settlement, alleging that the Union is liable under Section 8(b)(1)(A) for the unlawful termination of Kopinski from the Apprenticeship Program by the Apprenticeship Coordinator. In addition, the Region should allege that the Union violated Section 8(b)(1)(A) by maintaining that aspect of the Program requiring that apprentices "join" the Union.

R. E. A.

---

[1] All dates herein occurred during 1993 unless otherwise noted.

[2] On December 29, WAC filed the instant Section 8(b)(1)(A) charge alleging various violations by the Union. The Region has decided to issue complaint alleging that Union Organizer Brown's verbal threats to, and the subsequent internal Union charges filed against, an employee for resigning his Union membership and crossing the picket line were unlawful. Machinists Local 1414 (Neufeld Porsche-Audi), 270 NLRB 1330 (1984).

[3] In the expired collective-bargaining agreement, member employers were required to contribute $.17 per hour per employee to the Apprentice Fund. In a new agreement apparently covering only the Program, each WAC employer must contribute $.15 per hour per employee.

[4] The union security clause has not been enforced since the expiration of the most recent contract.

[5] There is no evidence that any action has been taken against Kopinski other than terminating his participation in the Program. The Region has already concluded that Brown's November 3 threats are violative of Section 8(b)(1)(A).

[6] Plumbers Local 375 (Richard Osborn), 228 NLRB 1191, 1195 (1977); Iron Workers Local 15 (Bruce Gilbert), 298 NLRB 445, 463-465 (1990).

[7] We also note that Union agent Brown unlawfully informed Kopinski on November 3 that he would be terminated from the Program because he resigned his Union membership.

[8] The first proviso of Section 8(a)(3) states that contracts can "require as a condition of employment membership [in a labor organization] . . . ."

[9] Electrical Workers IUE Local 444 (Paramax Systems), 311 NLRB 1031, 1037 (1993) (maintenance of clause subject to lawful interpretation not unlawful), citing NLRB v. News Syndicate Co., 365 U.S. 695 (1961), and Teamsters Local 357 v. NLRB, 365 U.S. 667 (1961).

[10] Cf. United Stanford Employees, Local 680 (Leland Stanford), 232 NLRB 326 (1977) ("join" meant full union membership where union made known to employees that membership included signing a membership card and taking oath).

[11] Q.V.L. Construction, Inc., 260 NLRB 1096 (1982).

[12] See Teamsters Local 670 (Stayton Canning), 275 NLRB 911, 920 (1985) (Board ordered union to allow non-members access to eye and dental clinics and pharmacy funded by employer contributions to trust fund).

[13] Id.